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Supreme Court, U.S.
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In the
SUPREME COURT OF THE UNITED STATES

October Term, 2000

International Brotherhood of Electrical Workers, Local Union No. 46, *Petitioner,*

v.

Trig Electric Construction Co., A Washington Corporation; Lydig Construction, Inc.; Fidelity and Deposit Company of Maryland; and Department of General Administration, *Respondents*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

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AMICUS CURIAE

In Support of Position of
International Brotherhood of Electrical Workers, Local Union No. 46, *Petitioner*

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 46,
Petitioner,

v.

TRIG ELECTRIC CONSTRUCTION CO., A WASHINGTON CORPORATION; LYDIG CONSRUCTION, INC.; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; AND DEPARTMENT OF GENERAL ADMINISTRATION,
Respondents.

AMICUS CURIAE

IN SUPPORT OF

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF INTEREST OF AMICUS CURIAE

The several Amicus Curiae identified below join together to urge the Court to grant Petitioner's Writ of Certiorari.[1] Pursuant to Rule 37.2, written consent of the parties has been obtained. The Amicus Curiae are identified as follows:

Associations of employers signatory to labor agreements requiring payment of fringe benefit contributions:

Northwest Iron Workers Employer Association, Inc;
National Electrical Contractors, Puget Sound Chapter;
Western Washington Signatory Painting Employers Association.

Labor Organizations representing employees affecting interstate commerce:

International Brotherhood of Painters and Allied Trades District Council No. 5;
Iron Workers District Council of the Pacific Northwest;
Pacific Northwest Regional Council of Carpenters;

Joint Labor-Management Trust Funds, all of which cover participants in multiple states:

The National Roofing Industry Pension Trust Fund;
The Carpenters Health and Security, Retirement, Apprenticeship and Training, and Vacation Trust Funds of Western Washington;
Northwest Ironworkers Health, Pension, Annuity, and Apprenticeship Trust Funds;
Western Washington Painters Defined Contribution Pension and Apprenticeship and Training Trust Funds;
The Employee Painters Trust Fund (Health and Welfare);

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[1] In accordance with Rule 37.6, Counsel for the Amicus Curiae hereby certifies that he is the author of the brief and that no other parties have made any monetary contribution to the preparation or submission of this brief.

The Joint Labor and Management Trust Funds and the Labor Organizations represent approximately thirty thousand covered employee benefits participants throughout the United States. The Employer Associations represent numerous employers signatory to union contracts which require the funding of pension, health and welfare, apprenticeship and training and vacation fringe benefits.

The Washington Supreme Court decision directly affects the uniform administration of all labor and management fringe benefit trust funds, and the obligations of their sponsoring parties.

SUMMARY OF ARGUMENT

The Petitioner's Writ for Certiorari should be granted for the following reasons:

1. Only this Court can resolve the numerous conflicting Federal and State court decisions which directly affect the uniform administration of employee benefits earned by construction industry workers and the contract promises of sponsoring contractors and their sureties throughout the United States.

2. The conflict among the lower courts affects thousands of construction industry workers and their families who rely upon the financial soundness and integrity of their fringe benefit plans.

3. The decision prevents union workers and their fringe benefit plans from enforcing the same rights of employees who do not participate in such plans.

ARGUMENT

1. The Court Should Resolve Conflict of Lower Court Decisions.

Washington, like most states, enacted mechanic's lien statutes and public works lien and bond statutes to protect the public against non-payment of costs incurred in construction projects. Pursuant to the public works lien and bond statutes, Lydig Construction, Inc., General Contractor, was awarded a public works contract for construction. Part of the consideration for this contract was the General Contractor's promise to guarantee the payment of wages for all construction workers on the project – including any subcontractor's workers. For a fee, Fidelity & Deposit Company of Maryland, Surety, also promised in a written surety contract to pay the workers if the subcontractors failed to do so. Now, solely because the workers participated in employee benefit plans covered by The Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. (ERISA), the General Contractor and the Surety seek to avoid their written promises.

Even with this Court's guidance in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), Federal and State courts have issued inconsistent decisions both allowing and disallowing the right of labor organizations and joint labor and management trust funds to use state mechanic's lien statutes and state required project bonds to recover unpaid fringe benefit contributions. This inconsistency turns on varied interpretations of ERISA §514(a), 29 U.S.C. §1144(a), and the intent of Congress, not on the peculiarities of the various state construction lien statutes.[2]

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[2] *Compare* cases finding for ERISA preemption: *CSCAC v. El Capitan Development Co.*, 53 Cal.3d 1041, 811 P.2d 296 (1991); *Construction & Gen. Laborers Dist. Council v. McHugh Construction Co.*, 230 Ill.App. 939, 596 N.E.2d 19 (1992); *Edwards v. Bethlehem Steel Corp*, 554 N.E.2d 833 (1990); *Prestridge v. Shinault*, 552 So.2d 643 (1989); *and* cases finding no ERISA preemption: *Seaboard Surety Co. v. Indiana State Council of Laborers*, 645 N.E.2d 1121 (1995); *Chestnut-Adams Limited Partnership v. Bricklayers & Masons Trust*, 415 Mass. 87, 612 N.E.2d 236 (1993); *Eacott v. Ins. Co. of N. America*, 40 Conn.App. 777, 673 A.2d 587 (1996); *Trustees of Operating Engineers Local 825 v. L.B.S. Construction Co.*, 148 N.J. 561, 691 A.2d 339

This inconsistency in interpreting 29 U.S.C. §1144(a) is contrary to the statutory purpose of providing a uniform operating environment for multi-state fringe benefit plans. For example, the Amicus employers, unions and trust funds represent participants and employees who work in both Oregon and Washington. When employees work in Oregon, they work under the security and protection of the Oregon Mechanics lien statute. *IBEW Local 48 v. Oregon Steel Mills, Inc.*, 168 Or.App. 101, 5 P.3d 1122 (2000). However, under the instant case, these same workers working in Washington (including their trust funds and unions) do not have the same protections. They are denied the remedies of Washington's construction lien and project bond statutes. Again, the disparity of treatment turns on the several courts' respective views of §1144 and Congressional intent, not on the language of the applicable state law.

2. The Conflict Among the Lower Courts Affects Thousands of ERISA Covered Workers.

The Amicus Curiae conservatively represent thirty thousand workers throughout the country, all of whom are participants in ERISA fringe benefit plans. Through their labor, these construction workers earn valuable compensation under their labor agreements, including fringe benefit contributions. This Court has acknowledged the importance of a collection remedy for such construction workers in the context of federally-sponsored construction projects. *Sherman v. Carter*, 353 U.S. 210 (1957). Denial of these routine state law creditors remedies affects all parties involved in the collective bargaining environment: the construction workers, the contributing employers, the labor representatives, and the health and welfare, pension, apprenticeship and training and vacation fringe benefit trust funds and plans. Employees are denied payment of their contractually

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(1997); *Hawaii Laborers Trust Funds v. Maui Prince Hotel*, 81 Haw. 487, 918 P.2d 1143 (1996); *Carpenters Local 261 Health & Welfare Fund v. Nat'l. Union Fire Ins. Co.*, 686 A.2d 1373 (1996); *Plumbers Local 458 Holiday Vacation Fund v. Immel, Inc.* 151 Wis.2d 233, 445 N.W.2d 43 (1989). These case citations are representative only and not exhaustive of the numerous state court decisions interpreting ERISA Federal preemption.

promised compensation and compliant employers inevitably pay higher contributions to defray trust fund shortages.

This effect is not limited to Washington State. These remedies under state prevailing wage statutes are found in at least 31 states.[3]

3. The Washington Supreme Court Decision Denies State Law Protections To ERISA Covered Employees Otherwise Afforded To The Rest Of The Public.

The Washington Supreme Court's decision denies the ability of a worker, through his or her union or trust funds, from using state lien and bond remedies to recover contractually promised fringe benefit contributions. This result is exactly the contrary to the Congressional purpose of protecting these kinds of fringe benefit plans under ERISA. ERISA §2a, 29 U.S.C. § 1001a.

The decision denies the protection of state prevailing wage statutes ONLY because the compensation includes ERISA benefits. If allowed to stand, the Washington Supreme Court decision will effectively impair construction employees' federally protected right to participate in an ERISA trust fund. ERISA §510, 29 U.S.C. §1140. Such violation is also a violation of the Civil Rights Act, 42 U.S.C. §1983. This incongruous result is further evidence that Congress did not intend to impair the rights of

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[3] Alaska Stat. § 36.05.010; Ark. Stat. Ann. § 22-9-301; Cal. Lab. Code § 1771; Conn. Gen. Stat. § 31-53; Del. Code Ann. tit. 29 § 6912; Haw. Rev. Stat. § 104; Ill. Ann. Stat. ch. 48 para. 39s-1 to 4; Ind. Code § 5-16-7-1; Ky. Rev. Stat. Ann. §§ 337.505-550; Me. Rev. Stat. Ann. Tit. 26 §§ 1303-1308; Md. State Fin. & Proc. Code Ann. § 17-201; Mass. Gen. L. ch. 5 § 1, ch. 7 § 22(18), ch. 149 §§ 26, 27F, 27G, 27H; Mich. Comp. Laws. Ann. § 408.552; Minn. Stat. Ann. § 177.44; Mo. Ann. Stat. §§ 290.210-290.340; Mont. Code Ann. § 18-2-403; Nev. Rev. Stat. § 338.020; N.J. Stat. Ann. §§ 34:11-56.25-.44; N.M. Stat. Ann. § 13-4-11 to –17; N.Y. Lab. Law § 220; Ohio Rev. Code § 4115.03-.16; Okla. Stat. Ann. Tit. 40 §§ 196.1-.6; Or. Rev. Stat. §§ 279.348-.363; 43 Pa. Cons. Stat. § 165-1 to –17; R.I. Gen. Laws §§ 37-13-7; Tenn. Code Ann. § 12; Tex. Lab. Code Ann. § 5159a; Va. Code Ann. Art. 14, § 64.5; Wash. Rev. Code Ann. §§ 39.12.010-.900; W. Va. Code § 21-5A; Wis. Stat. §§ 66.293, 103.49-.50; Wyo. Stat. §§ 27-4-401 to –413.

ERISA covered employees from state law protection and remedies for non-payment.[4]

In *Nash v. Florida Industrial Commission,* 389 U.S. 235 (1967), the Florida Industrial Commission denied unemployment benefits to an employee because she filed an unfair labor practice charge with the National Labor Relations Board alleging that her lay-off was unlawful under the National Labor Relations Act. The Florida statute denied unemployment benefits to employees involved in a labor dispute. The Court held that the state statute violated §1983 because it required employees to choose between filing a complaint with the NLRB or collecting unemployment benefits.[1]

The Washington Supreme Court Decision denies ERISA covered construction workers the equal protection of state law remedies otherwise afforded to all other state citizens. The Washington Supreme Court has decided that construction employees in ERISA fringe benefit plans may not enforce the same rights as employees who do not participate in ERISA plans.

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[4] See *California Division of Labor Standards Enforcement v. Dillingham Constr., N.A.,* 519 U.S. 316 (1997) (presence of Fitzgerald Act evidence that Congress did not intend to proscribe apprentice portion of prevailing wage statutes.)

[1] See *California Division of Labor Standards Enforcement v. Dillingham Constr., N.A.,* 519 U.S. 316 (1997) (presence of Fitzgerald Act evidence that Congress did not intend to proscribe apprentice portion of prevailing wage statutes.)

CONCLUSION

On behalf of thousands of construction employees throughout the country, the Amicus Curiae respectfully urge the Court to GRANT the Petition for Writ of Certiorari.

Respectfully submitted,

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